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House of Representatives

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August 14, 2002

The Honorable John Conyers
Ranking Member
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Conyers:

I am in receipt of your letter addressed to me dated August 13, 2002. It was forwarded to me by a reporter, and though I have yet to receive the actual signed copy from you, I expect it is forthcoming. Your decision to send the letter to the press even before sending it to me continues a disturbing trend that has just emerged in the past few weeks. This "negotiation by press conference" strategy is counterproductive and makes passage of this legislation less likely.

As you are aware, my staff has been meeting with Senator Dodd's staff regularly since the conferees were appointed, in an effort to bridge the differences between the House and Senate passed bills. The meeting to which your letter refers actually occurred in June (not July 24 as stated in the letter). My staff and Mr. Hoyer's staff were present to represent the House in this meeting with Senate staff. As you know, members of the Judiciary Committee were appointed to this conference only for those sections of the bill that fell within their jurisdiction. As the meeting in question was for staff of conferees of the entire bill only, it was not appropriate for your staff to attend. Chairman Sensenbrenner did not have staff at this meeting, nor did any of the outside conferees from other committees that were appointed only for those sections that fell within their jurisdiction i.e. Ways and Means, Armed Services, and Science.

Senator Dodd and I agreed in good faith to make every effort to reach agreement on this legislation prior to the August recess. That effort, after a tremendous amount of work, culminated in the transfer of a comprehensive offer from the House to the Senate on Wednesday July 24, two days before the House was to recess. Unfortunately, rather than use those two remaining days to try and resolve any outstanding concerns, the Senate Democrats chose to hold a press conference to denounce the offer. They then forwarded a 142 page counter-offer at 12:30 a.m. on the morning of the final day of the House session. As this counter could not possibly be analyzed and responded to in the

remaining hours of the session, the Senate Democrats' tactics squandered any hope of reaching agreement and delayed much needed election reform legislation for at least another month, as it obviously can not be taken to the floor until we reconvene in September at the earliest.

With respect to the substantive concerns you raise, you are correct that the House offer included items that were not included in the bills that passed the respective bodies. Given that these "new" provisions were included in an attempt to address concerns that had been raised by the Senate Democrats and civil rights groups, it is ironic that they have been subject to criticism, and labeled "controversial".

For example, the bill passed by the Senate included a provision that allowed States to require voters to produce their Social Security number at registration, and gave states access to the Social Security database to match the names of individuals with the number provided. In a meeting with my staff, representatives of such groups as the NAACP, the National Council of La Raza, the League of Women Voter's and the Lawyers Committee for Civil Rights requested that this provision be stricken.

The offer forwarded to the Senate did just that, much to the consternation of several Republican Senators who supported retaining the Social Security provision that was in the Senate bill. The "new" provision in the House offer, included as a compromise, eliminated the Social Security number provision and substituted it instead with a provision directing States to use a voter's driver's license number as a unique identifier in the registration system. Registrants who do not have a driver's license would be permitted to provide the last four digits of their Social Security number instead. As you know, an integral part of assuring the effectiveness of the statewide registration systems (which all States must develop pursuant to the requirements in both the House and Senate bills) is the assignment to each voter of a unique identifier. Without such a unique identifier, there will be continued problems of removing legal registrants who happen to have the same name as an ineligible voter, a decedent or felon, for example. The compromise provision offered would help to ensure the accuracy of the statewide list, and thereby minimize disenfranchisement.

The criticism that the compromise ID provision included in the House offer has been subjected to is surreal. Contrary to the assertion in your letter, there is no requirement in the House offer that "every voter produce identification". As you will recall, during Senate consideration of this legislation last Spring, efforts were made by many Senate Democrats to allow first time voters who did not have one of the permitted forms of identification to sign an attestation that would allow them to cast a ballot. This was never agreed to in the Senate, and the bill 99 Senators voted for included an ID requirement with no signature bypass. While I was willing to accept the Senate language on this as passed, I recognized there were concerns about this provision.

The House offer therefore added another option that would permit States that did not want to treat first time voters differently from other voters, to request all voters to produce identification, but it required that States electing this option must give voters who did not have an ID the ability to sign an attestation and have their ballot cast. Therefore, the House offer included what the civil rights groups said they wanted, i.e., a signature bypass for those who do not have an ID. In providing this additional option to States, the House offer therefore makes it easier for citizens without ID to vote. The fact that it has been criticized for doing so is confounding.

The House offer additionally included other provisions that I am sure you would support, such as the requirement that every polling place have at least one machine that is accessible to the disabled. Additionally, requirements that voters be provided provisional ballots, and have the opportunity to verify the accuracy of their votes were taken from the Senate bill and included in the offer. The offer included an authorization for over \$3 billion dollars to help states purchase modern voting equipment, educate voters, and otherwise improve their voting systems.

The "new" provisions included in the House offer, included as compromise provisions geared to bring the sides closer together, can be contrasted with the new provisions in the Senate counter-offer which move us farther apart, such as the private right of action provision that was not in either the House or Senate passed bills. In fact, no provision that could even be regarded as comparable to it was included in either bill as passed.

I am becoming increasingly convinced by recent events that a decision has been made by some members of your party to politicize this issue as a way to mobilize your base and achieve a benefit at the polls this November. The press conference response to our offer on July 25, coupled with recent statements by Democratic National Committee Chair McAulliffe, and frankly, your letter, have contributed to this perception. I can assure you that I will call a formal meeting of the conference only when I become convinced that Members of good faith from both sides of the aisle are ready and willing to put politics aside and do what is necessary to enact this much needed legislation.

Until then, I am glad that your staff is available to work on this issue during the recess. I would invite you to have them review the draft we supplied to the Senate on July 24, and forward to my office a detailed list (with reference to section, page and line number) of the provisions in that draft that are of concern. A brief description of the nature of the concern, and alternative language would be helpful as well. As this draft will form the basis for discussion and negotiation when we return in September, I will need to have an understanding of precisely what the concerns are, not mere generalized critiques.

I certainly remain hopeful that we will be able to reach agreement and get this much needed legislation enacted. If we can identify the outstanding issues, we will be in a

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better position to resolve our differences quickly when the Congress reconvenes. I look forward to receipt of your views.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Ney", with a long horizontal flourish extending to the right.

Bob Ney
Chairman

cc: F. James Sensenbrenner, Chairman, House Judiciary Committee
Steny H. Hoyer, Ranking Member, House Administration Committee
Christopher J. Dodd, Chairman, Senate Rules Committee
Mitch McConnell, Ranking Member, Senate Rules Committee